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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/762,713	03/08/2001	Klaus Krinner	F-6818	7592
7590		12/15/2004	EXAMINER	
Jordan and Hamburg		LE, TAN		
122 East 42nd Street		ART UNIT		
New York, NY 10168		PAPER NUMBER		
		3632		

DATE MAILED: 12/15/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

09/762,713

Applicant(s)

KRINNER ET AL.

Examiner

Tan Le

Art Unit

3632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004 and 04 June 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 33-55 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 35-45, 50, 52, 53 and 57 is/are rejected.
- 7) ☒ Claim(s) 33-34, 46, 51, 54 and 55 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This is the fifth office action for serial number 09/762,713. This application contains claims numbered 33-55. Claims 43-55 have been added.
2. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/13/2004, and 6/04/2004 which have been entered.
3. Applicant's argument with transverse on the paper filed 6/4/04 is acknowledged. Applicant traverses the restriction on the grounds that the restriction applies incorrect standard since the present application is a National Stage PCT filed under USC 371. This is found persuasive. The restriction is therefor now withdrawn. It should be noted that the argument with respect to the unity of the invention that exists among claims as pointed out in page 10 of the Remarks by Applicant is not found persuasive. However, examiner will not issue another restriction at this time to facilitate the prosecution of the case. All claims will be examined accordingly.

### **ABSTRACT:**

4. The abstract of the disclosure is objected to because the abstract as filed on 9/13/02 appears to have more than one paragraph. Correction is required. See MPEP § 608.01(b).

***Drawings***

5. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the first and second cone angles as claimed in claims 33, 35 and 43 and the square tip as claimed in claim 50 must be shown or the features canceled from the claims. No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claim 50 is rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Specifically, Applicant is claiming a square tip pressed onto the first end but does not describe in the disclosure as original filed.

***Claim Rejections - 35 USC § 102***

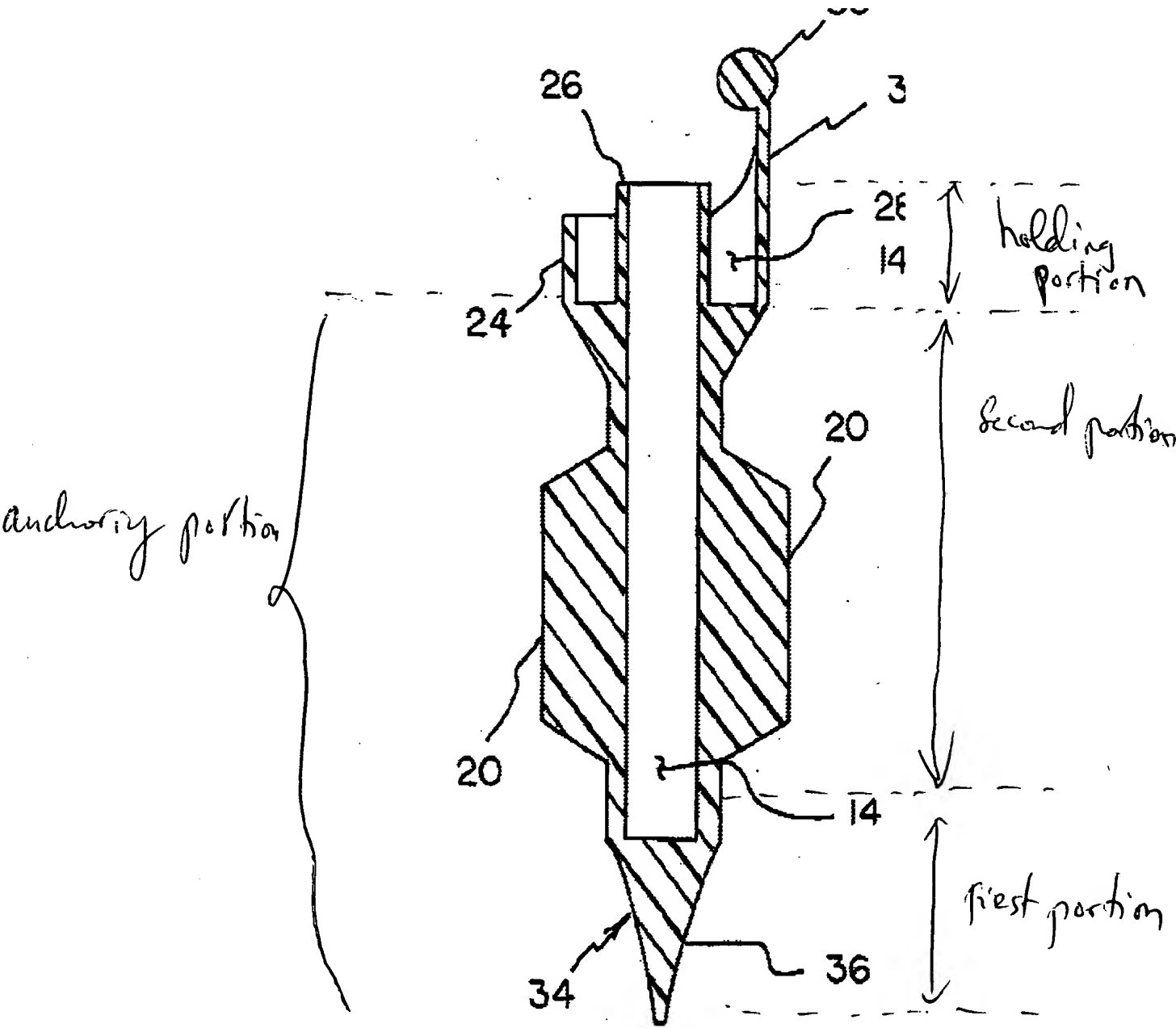
7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 35-39, 42-45, 47-49 and 52-53 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent no. 5,524,844 to Lesar.

Regarding claims 35-39, 42-45, 47-49 and 52-53, Lesar discloses substantially all of the limitations of these claims as evidently shown on Fig. 7 for example (See marked-up below).



***Claim Rejections - 35 USC § 103***

8. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 40 and 50 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lesar.

Regarding claim 40, although Lesar appears to be showing the difference between the first cone angle and the second cone angle between about 1 and 3 degrees. But Lesar does not particularly or expressly disclose as such. Nonetheless, it would have been an obvious matter of the design choice to make the cone angles between 1 and 3 degrees, since such a modification would have involved a mere change in the angle of the component and one skilled in the art could have make a variety of different angles if so desired.

Regarding claim 50, Lesar discloses the tip what appears to be a rectangular in shape, but also does not disclose the tip being a square in shape. It would also have been an obvious matter of the design choice to make the shape of the tip being a square since such a modification would have involved a mere change in the shape and one skilled in the art could have make a variety of different shapes if so desired. . Nevertheless, the particular shape claimed by the Applicant is nothing more than one of numerous shapes that a person having ordinary skill in the art provides for using routine experimentation based on its suitability for the intended use of the invention. See *In Re Daily*, 149 USPQ 47 (CCPA 1976).

Claim 41 is rejected under 35 U.S.C. 103(a)) as being unpatentable Lesar in view of DE Patent No. 19637985 to Gerhard (IDS) or in view of US Patent No. 6,299,125 to Zayeratabat.

Unlike Lesar, Gerhard or Zayeratabat each teaches a bore extending through the anchoring portion so that water disposed therein may consequently exit from the bore in the anchoring portion of the basic body.

It would have been obvious to have provided a bore through the anchoring portion of the basic body as taught by Gerhard in order to allow water disposed therein may consequently exit from the bore in the anchoring portion of the basic body.

#### ***Allowable Subject Matter***

9. Claims 33-34 are objected to, but would be allowable if overcomes the objection as pointed out in the office action.

Claims 46, 51 and 54-55 are objected but would be allowable if rewritten to include all of the limitations of the base claim and any intervening claims.

#### **Response to Arguments**

10. Applicant's arguments with respect to claims 33-55 have been considered but are moot in view of the new ground(s) of rejection.



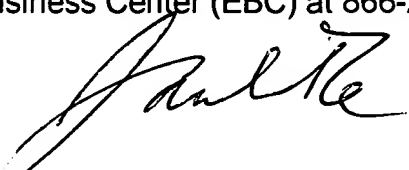
***Conclusion***

**11. THIS ACTION IS MADE Non-FINAL.**

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tan Le whose telephone number is (703) 305-8244. The examiner can normally be reached on Mon. through Fri. from 9:00 AM-6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie Braun can be reached on (703) 308-2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Tan Le  
Patent examiner  
December 10, 2004.